Honorable Samuel J. Steiner
Chapter 11

Hearing Date:	November 12, 2010
Con't Hearing Date:	December 3, 2010
Hearing Time:	9:30 a.m.
Hearing Place:	Seattle, WA

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re ADAM R. GROSSMAN, Debtor.	No. 10-19817-SJS SUPPLEMENTAL REPLY FOR ORDER APPOINTING CHAPTER 11 TRUSTEE INSTEAD OF DISMISSAL

Jill Borodin ("Rabbi Borodin") files this supplemental reply in support of her motion for an order directing the appointment of a Trustee in the Chapter 11 bankruptcy of Adam Grossman (the "Debtor").

I. Introduction

The original motion to appoint a trustee was submitted by Rabbi Borodin on October 22, 2010. *See* Motion to Appoint Trustee, Docket Entry # 32 (the "Motion"). The Court continued the hearing date for the Motion to December 3, 2010, requesting that the Debtor supplement the record with additional financial information. At the time,

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the Court noted that failure to comply with such request would result in the appointment of a trustee, or, alternatively, dismissal of the case. The Debtor has failed comply with the Court's request before the deadline. This supplemental reply is intended to emphasize the reasons demonstrating that interests of justice and efficiency favor appointment of a trustee rather than dismissal.

II. Background

Every aspect of the Debtor's reorganization efforts has been marked with lack of full disclosure, delay and uncertainty. As set forth in detail in the Motion, the Debtor's bankruptcy schedules, and his compliance with other bankruptcy procedural requirements, have been deficient in numerous ways. *See* Motion.

The record also suggests that the Debtor's serial Chapter 11 filings were intended, and successful for the purpose of delaying a dissolution proceeding to which the Debtor and Rabbi Borodin were parties. Discovery conducted in the dissolution proceeding has brought to light transfers made by the Debtor from several of his company bank accounts totaling $718,185.82 between September 11, 2009 and October 1, 2010. *See* Motion. The Court's request for supplemental information included, among others, a filing by the Debtor of a statement accounting for the transfer of the $718,186, including dates of each transfer, names and addresses of each transferee, and the amounts of each transfer. The Debtor's failure to comply with the Court's request is yet another illustration of his unsuitability for remaining as debtor-in-possession in this Chapter 11 matter.

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III. Legal Authority and Analysis

Section 1104(a)(3) of Title 11 of the United States Code (the "Code") provides a mechanism for appointment of a trustee when grounds exist for dismissal of the case under Section 1112, and the court determines that appointment of a trustee is in the best interests of creditors and the bankruptcy estate. Factors on which the determination regarding appointment of a trustee has often hinged include the existence of pre-petition voidable preferences or fraudulent transfers and the unwillingness or inability of management to pursue estate causes of action. *See e.g., In re Nartron Corp.*, 330 B.R. 573, 592 (Bankr. W.D. Mich. 2005).

While the Debtor's failure to file Form 26, and provide other detailed information regarding the financial condition of his various companies obstructs the financial picture of the Debtor's estate, it is clear that the estate has suffered a continuous loss and diminution as the Debtor has been transferring substantial sums out of the estate. The fact that the Debtor has failed to provide any explanation as to how such transfers were beneficial to the estate raises the presumption that such transfers may be recoverable as fraudulent and/or preferential. The recovery of even a fraction of such transfers will significantly replenish the estate, providing an increased opportunity for financial rehabilitation and a successful reorganization. In light of the Debtor's reluctance to even disclose these transfers, let alone pursue their recovery as fraudulent or preferential, is indicative that a neutral and unbiased trustee stands in the best position to pursue the

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investigation and recovery of transferred funds, in the best interests of the estate, as well as the creditors of the estate.

Additionally, the Bankruptcy Court presents a uniquely efficient forum for the investigation, recovery, and fair allocation of avoidable transfers. Given that many of the creditors of the estate and transferees of the authorized transfers are located all around the nation, the dismissal of the current bankruptcy case will likely open a floodgate of state court litigation for recovery of fraudulent transfers in multiple forums.

IV. Relief Requested

For the reasons stated above, Rabbi Borodin requests that this Court issue an order directing appointment of a Chapter 11 trustee in this case rather than dismiss or convert to a Chapter 7.

DATED this 1st day of December, 2010.

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